

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: May 21, 2003
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

A. CALL TO ORDER

The Chairperson, Peter T. Young called the meeting of the Commission on Water Resource Management to order at 9:00 a.m.

B. ROLL CALL

The following were in attendance:

MEMBERS: Mr. Peter T. Young, Dr. Chiyome Fukino, Ms. Meredith Ching, Mr. Clayton Dela Cruz, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

STAFF: Dean Nakano, Roy Hardy, Ed Sakoda, Glenn Bauer, Ernie Lau, Ryan Imata and Charley Ice

COUNSEL: Yvonne Izu and Jean Creadick

OTHERS: Anne Lo-Shimazu, Hy Adelman, Vince Bagoyo, Steve Bowles, Dale Stromquist, Randy Mori

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

C. ACCEPTANCE OF AGENDA

Ernie Lau, Deputy Director for the Commission on Water Resource Management amended the agenda to read as follows:

The names Anthony Fraiola Jr. and Susan Tamashiro listed in G2 should actually be in front of APPLICATIONS FOR WATER USE PERMITS, McCandless Pipeline off of Waiahole Ditch System, G3. In item G3 the Estate of James Campbell should be in front of VIOLATION FOR OVERPUMPAGE OF WATER USE PERMIT NO. 239 AND APPLICATION FOR WATER USE PERMIT NO. 628.

Action on the acceptance of the agenda as revised was motioned by Richards/Ching
UNANIMOUSLY APPROVED

D. APPROVAL OF MINUTES – April 16, 2003

MOTION: (Ching/Nishida)

To approve the minutes.

UNANIMOUSLY APPROVED

E. CORRESPONDENCE/ANNOUNCEMENTS by Deputy Ernest Lau

On May 16, 2003 we received a writ of mandamus filed by the Maui Meadows Homeowners Association, Maui asking the State Supreme Court to order the Commission to designate the Iao/Waihe'e Aquifers.

F. OLD BUSINESS

There is no old business.

G. NEW BUSINESS

1. **Castle and Cooke Resorts, LLC, VARIANCE TO INSTALL PERMANENT PUMP TO, CONDUCT AQUIFER PUMP TESTS, Lanai 14 Well (Well No. 4854-02), Well Construction: 13 inch Casing Diameter, 945 ft Deep Well, Pump Installation: 350 gpm for Agricultural Use, TMK 4-3-4: 025, Manele Road, Palawai Basin, Lanai**

PRESENTATION OF SUBMITTAL: Charley Ice

RECOMMENDATIONS:

That the Commission:

- A. Approve the variance for Lanai Well 14 (Well No. 4854-02) to install a 350-gpm permanent pump for conducting the aquifer pump tests in accordance with the Hawaii Well Construction and Pump Installation Standards, subject to the standard pump installation conditions and the following special conditions:
 - a. The permittee shall notify staff five business days prior to commencement of pump tests.
 - b. The pump tests shall be started within five business days of the installation of the pumps. Otherwise, the pumps shall be removed.
 - c. The applicant shall submit pump test results on forms provided by the Commission or electronic data acceptable to staff within two business days of completion.
 - d. Staff will complete its analysis of pump results and respond with approval or further advice within two business days of receipt.

- e. In the event that pump tests or pump size are not satisfactory to Commission staff, the applicant may rerun the pump tests or install a different pump in accordance with “a” through “c” above until the installed pump is in compliance with permit requirements.
 - f. If pump test results are unacceptable, pump must be removed.
- B. Prior to the test, the applicant shall investigate the possibility for using other wells for observation during the pump tests.

DISCUSSION:

Commissioner Nishida asked if this was a variance for this particular incident or a change to the protocol itself. Charley Ice responded that it was a variance for this particular well and staff has adjusted the protocol; staff is not yet ready to request a declaratory ruling to apply in all cases.

Commissioner Richards asked whether this modification takes care of the problems that the applicant is having with installing the pump.

TESTIMONY OF APPLICANT:

Mr. Vince Bagoyo, representative of Castle & Cooke Resorts agreed with staff’s recommendation.

MOTION: (Richards/Nishida)
To approve the submittal.
UNANIMOUSLY APPROVED.

2. WB Kukio Resort / Wai’eli Drilling, APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMIT, HR-5 Well (Well No. 4558-02), Pump Installation: 570 gpm for Municipal Use, TMK 7-2-004: 014, 72-3667 Mamalahoa Highway, Hawaii

PRESENTATION OF SUBMITTAL: Ryan Imata

RECOMMENDATIONS:

That the Commission:

- A. Find WB Kukio Resort and Wai’eli Drilling in violation of HAR §13-168-12(a).
- B. Impose a fine of \$250 on WB Kukio Resort, and \$1000 on Wai’eli Drilling as summarized in Exhibit 2 payable within 30 days.

- C. Authorize the Chairperson to approve and issue a pump installation permit subject to the Standard Pump Installation Conditions in Exhibit 3.
- D. Suspend any current, pending or future applications by both the applicant and the driller until the fines are paid and the applicant/driller completes the permit process for this well.

DISCUSSION:

Chairman Young interrupted to announce Dr. Fukino's presence.

TESTIMONY BY APPLICANT:

Mr. Randy Mori from WB Kukio Resort and Dale Stromquist from Wai'eli Drilling apologized for not following the proper procedure for installing the well pump. They have read and agreed with the staff recommendations.

Mr. Ernie Lau commented that sometimes the process is complicated and difficult to understand and we will work on steps to educate others on the process.

MOTION: (Ching/Dela Cruz)

To approve the submittal.

UNANIMOUSLY APPROVED

3. Anthony Fraiola Jr. / Susan Tamashiro, APPLICATIONS FOR WATER USE PERMITS, McCandless Pipeline off of Waiahole Ditch System, Existing Use for 0.021 mgd/ 0.064 mgd, respectively, Koolauloa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ryan Imata

AMENDED RECOMMENDATION:

Staff recommends that the Commission defer action on Water Use Permits 648 and 649, pending submission of Water Use Permit applications by all applicants by ~~June 30~~ July 31, 2003.

DISCUSSION:

Chairman Young and Commissioner Richards asked if staff was confident that the applications will be completed by the recommended deadline of June 30, 2003. Mr. Imata responded that staff is working with HCDCH, WWCA, Waiahole Landowners Association and the Department of Hawaiian Homelands to get a final listing of who is on the pipeline.

Chairman Young asked if the applications would be on the July Meeting agenda. Mr. Imata stated, no, that the applications would have to go out for public review first. Completed applications would probably be ready for action in August or September depending on comments received. There is a 90-day deadline For Commission action after applications are accepted and complete, including signatures from the Department of Planning and Permitting of the city. So the city is part of the application process upfront before it comes to the commission.

Chairman Young was concerned that staff is creating a deadline that applicants may not be able to meet. Deputy Lau stated that we could extend it another month however, we need to set some extended deadline beyond the December 2002 deadline specified in the Commission's Decision and Order. Commissioner Richards made a recommendation that we change it to July 31st.

MOTION: (Richards/Ching)

To approve amended recommendation from staff submittal.

UNANIMOUSLY APPROVED

4. The Estate of James Campbell, VIOLATION FOR OVERPUMPAGE OF WATER USE PERMIT NO. 239 AND, APPLICATION FOR WATER USE PERMIT NO. 628, Turtle Bay Golf Course Well, Well 338 (State Well No. 4100-01), TMK 5-7-001: 021, Future (Golf Course) Use for 0.600 mgd, Koolauloa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ryan Imata

AMENDED RECOMMENDATION:

Staff recommends that the Commission:

1. Find Campbell Estate in violation of their water use permit WUP No. 239 or overpumping their allocation.
2. Assess a fine of \$9,600 to Campbell Estate based on the violation in recommendation 1. In lieu of the fine, the applicant may submit a proposal for an alternative, to be presented to the Commission within a year. If not acceptable, the applicant must pay the fine in total.
3. Revoke WUP No. 239
4. ~~Suspend any current, pending or future applications by the applicant until the fine is paid.~~
5. Approve the issuance of WUP No. 628 to The Estate of James Campbell for the reasonable and beneficial use of 0.600 million gallons per day of potable water for

golf course irrigation from Well 338 (Well No. 4100-01), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

- a) Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
- b) The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning "GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII" dated August, 1994 (version 5). The applicant shall obtain a written statement from the Department of Health indicating that their concerns have been addressed, and a copy of that statement shall be sent to the Commission.
- c) In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

DISCUSSION:

None

TESTIMONY OF APPLICANT:

The applicant's representative, Anne Lo-Shimazu, apologized for exceeding the allocation for Water Use Permit. 338. Ms. Lo-Shimazu stated that, "the well is operated by the Turtle Bay Resort, not the Landowner, Campbell Estate. As soon as Campbell Estate was aware of the overpumpage violation it took the necessary steps to notify the operator turtle Bay Resort. Also, Ms. Lo-Shimazu stated that they believe the well is non-potable.

Mr. Hy Adelman, representing the Turtle Bay Resort also apologized for the conscious effort to increase usage of the water above their permitted allocation. He also made a request to apply the \$9600.00 fine to future alternative mitigation.

Commissioner Ching asked when Turtle Bay Resort became new owners of the Resort. Mr. Adelman stated that they became the new owners in 2000. He stated that in the past they never had that high usage. Commissioner Richards asked when they intended to make the golf course improvements, Mr. Adelman stated they will start in the spring and finish within two years. They have been talking with the State Department of Transportation and looking into water flood control over the property.

Commissioner Richards stated that there has to be some money paid. Commissioner Richards also asked the Chairman if part of the fine be waived for a certain period? 50% of the fine could be applied to the first year for flood control improvements, and

the Commission would be notified that they spent at least 50% within a year, if not, then you would owe the total fine to the CWRM. Commissioner Nishida seconded the motion for the sake of discussion.

Commissioner Nishida stated that the sensitivity to Turtle Bay's request is important. But he wanted to make sure that the monies not assessed as a fine be used to serve the Commission's mission and goals.

Commissioner Richards amended his motion that 50% shall be paid now and 50% will be held in abeyance subject to working with the commission's staff to purchase equipment needed for safety in the area. Commissioner Nishida seconded the motion.

Chairman Young suggested working with staff to determine an acceptable way to spend the money and bring it back to the commission for approval.

Deputy Director Lau mentioned that the money stays in the special fund and does not go back the general fund. Whatever we use those funds for has to be consistent with our mission and will not be used for flood control or highway safety. Mr. Lau agreed to work together to see how the 50% of the fine will be used, it may or may not be equipment.

Commissioner Ching used KSBE as an example of a violator that was fined a total amount and then worked with staff on an alternative that furthers the commission's mission, in lieu of simply paying the fine. Commissioner Ching moved to amend the motion and Commissioner Nishida seconded.

Chairman Young stated that there is some logic behind a tangible water resource project rather than simply putting fines into the operation coffers of the commission. The idea of the fine is a penalty that we can also use for water resource projects. Fines are placed in a special fund that is retained for commission use. Some of it could be used for funding a staff position, putting projects together, or even used for a match for Federal monies so that we can expand the use of that money.

Staff member Dean Nakano stated that the monies are placed into our Water Resource Management Fund and we are subject to a ceiling that is approved by the Legislature. So having the money 100% applied towards a project in satisfaction of the fine would be more beneficial than putting it into the special fund because the entire funding could be used for the alternative project. If the 50% went into the special management fund it would be subject to the special fund ceiling and staff may not be able to use the money.

Deputy Director Lau recommended deleting staff recommendation #4, "Suspend any current, pending or future applications by the applicant until the fine is paid."

Chairman Young stated that the amendment is suggesting that 100% of the fine be applied to a project and that project would have to happen in 1 year, and if it doesn't happen in 1 year the fine would be paid in full.

Commissioner Richards withdrew his original motion. Chairman Young then asked if all the motions and suggested amendments and seconds are also withdrawn? It was agreed by all commissioners to start all over.

Commissioner Richards then moved that the total fine be assigned to a special project. Chairman Young suggested that we accept the staff's recommendations except that #4 be omitted. Commissioner Ching moved that we approve staff recommendations with a couple of changes: the deletion of item #4; and a modification of #2 that we assess the fine but it's payment or use be subject to further discussions between staff and the applicant to insure that those fine monies go towards a project that furthers the commission's mission and that the applicant would then come back to the commission with a proposal on that project within twelve months.

Commissioner Nishida mentioned a point of clarification that the project should apply to that area, in this case the Koolauloa area.

MOTION: (Richards/Nishida)

Chairman Young stated that the application of the alternative to occur in the Koolauloa Water Management area is not as an amendment but as an understanding of staff and the permittee.

UNANIMOUSLY APPROVED

H. REPORTS

Mr. Lau reminded us that the report will be done by KS on Lalakea Ditch Project and a brochure produced by the Nature Conservancy on the Year of the Hawaiian Forrest.

I. TOPICS FOR FUTURE COMMISSION MEETINGS

Deputy Director Ernie Lau received a request from the Coastal Zone Management Program in Hawaii to make a presentation for informational purposes in the August 2003 meeting. This would take about 20 minutes of the meeting.

J. NEXT COMMISSION MEETINGS (TENTATIVE)

1. Wednesday, July 16, 2003
2. Wednesday, August 20, 2003

K. UPCOMING EVENTS

Deputy Director Lau encouraged staff and commissioners to attend the various conferences on the environment and water. There was an AWWA Conference in May, and the EPA will be putting on the Pacific Islands Environmental Conference in late June. We'll get the information out to the commissioners if they are interested and arrange registrations.

J. ADJOURNMENT

The meeting was adjourned at 9:46a.m.

MOTION: (Richards/Dela Cruz)
UNANIMOUSLY APPROVED

Respectfully submitted,

PAULYNE ANAKALEA
Secretary

APPROVED AS SUBMITTED:

ERNEST Y.W. LAU
Deputy Director